Docket No. 51017-79635

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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/Benjamin L. Volk, Jr.
Benjamin L. Volk, Jr.
Reg. No. 48,017

In re application of: Menendez et al.	:	
Serial No.: 09/698,502	:	Examiner: Vig, Naresh
Filed: October 27, 2000	:	Group Art Unit: 3629
For: Method for Completing and Storing an Electronic Rental Agreement	:	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief

Following the Notice of Appeal dated September 16, 2011, Applicant submits the following as its appeal brief in connection with the appeal of the above-referenced patent application.

Table of Contents:

Table of Cited Authorities:

Supreme Court Authority:

KSR International Co. v. Teleflex Inc., 550 US 398, 82 USPQ2d 1385 (U.S. 2007)

Federal Courts Authority:

In re Miller, 418 F.2d 1392, 164 USPQ 46 (CCPA 1969)

In re Gulack, 703 F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983)

In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)

In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004)

In re Kahn, 441, F.3d 977, 78 USPQ2d 1329 (Fed. Cir. 2006)

Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd., 492 F.3d 1350, 83 USPQ2d 1169 (Fed. Cir. 2007)

i. Real Party in Interest:

The real party in interest is Vanguard Trademark Holdings USA LLC, which is the assignee of the subject application.

ii. Related Appeals and Interferences:

This patent application was the subject of a previous appeal to the Board of Patent Appeals and Interferences (BPAI) (Appeal 2007-3067), said appeal resulting in a Decision on Appeal dated February 20, 2008 (copy referenced in the Related Proceedings Appendix and enclosed as Exhibit 9).

This patent application is related to patent application serial numbers 09/556,153, 09/564,911, 09/698,491, 09/698,552, 12/650,040, and 12/650,113. The 09/556,153 and 09/564,911 patent applications are abandoned. The 09/698,491 patent application and the 09/698,552 patent application were previously the subject of appeals to the BPAI (Appeals 2009-0121 and 2008-1057 respectively), although Requests for Continued Examination (RCEs) were filed prior to any Decision on Appeal in those patent applications. The 09/698,491 patent application has since become abandoned while the 09/698,552 patent application is still pending. The 12/650,040 patent application and the 12/650,113 patent application are also still pending.

iii. Status of Claims:

The current status of the claims is as follows: (1) claims 1-61, 79-112, 128-136, and 138 stand canceled from the application, and (2) claims 62-78, 113-127, 137, and 139 stand rejected in the application. Applicant appeals the rejection of claims 62-78, 113-127, 137, and 139.

iv. Status of Amendments:

No amendment has been filed subsequent to the March 17, 2011 Office Action from which appeal has been sought.

v. Summary of Claimed Subject Matter:

The rejected independent claims of this patent application are independent method claim 62 and independent system claim 113.

Independent Claim 62:

Independent method claim 62 pertains to a method of creating and storing an electronic rental contract for a rental vehicle such that a user need not visit a rental counter to create a rental contract when arriving at a car rental facility to pick up the rental vehicle. (See Patent Application; e.g., page 29, line 12 – page 30, line 11).

As a step of this method, claim 62 recites "hosting a website on a server system, the website comprising a plurality of web pages for access over a network by any of a plurality of client systems". (See Patent Application; e.g., page 7, line 15 – page 8, line 3; Figure 2 (reference numbers 26, 28 and 72, where reference number 28 identifies a server system, which includes a web server 62 that provides a website 72 for access by a client system 26); Figures 6A-6L show examples of web pages that can be part of the website).

As another step, claim 62 recites "creating a rental vehicle reservation in response to data received through the website from a client system". (See Patent Application; e.g., page 10, lines 26-32).

Claim 62 further recites "storing a reservation transaction within the server system, wherein the reservation transaction is representative of the created rental vehicle reservation". (See Patent Application; e.g., page 10, lines 26-32; page 29, lines 12-15; Figure 8 (reference number 642)).

As another step, claim 62 recites "electronically accepting additional data from the user through the website for a potential rental of a rental vehicle based on the rental vehicle reservation". (See Patent Application; e.g., page 11, lines 17-31; page 18, lines 2-7; Figures 6F-6J).

Furthermore, claim 113 recites "communicating an electronic rental proposal for display to the user on a web page of the website, the electronic rental proposal being

based on the rental vehicle reservation and the accepted additional data". (See Patent Application; e.g., page 7, lines 10-12; Figure 1 (reference number 18); page 13, lines 20-22; Figure 6I).

As another step, claim 62 recites "creating an electronic rental contract for a rental vehicle in response to an electronic acceptance by the user of the electronic rental proposal". (See Patent Application; e.g., page 7, lines 12-14; Figure 1 (reference number 4); page 13, lines 22-24). Furthermore, claim 62 recites "the electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract". (See Patent Application; e.g., page 29, line 32 – page 30, line 4).

Claim 62 further recites "storing a rental transaction within the server system, wherein the rental transaction is representative of the created electronic rental contract". (See Patent Application; e.g., page 28, lines 18-20; page 29, lines 3-23; Figure 8 (reference number 644)).

Lastly, claim 62 recites "wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed **regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility.**" (See Patent Application; e.g., page 31, lines 23-29; see also Figures 7A-7C which show the operation of these steps without there being a requirement that the customer have a master rental agreement (MRA)).

Independent Claim 113:

Independent system claim 113 pertains to a system for creating and storing an electronic rental contract for a rental vehicle such that a user need not visit a rental counter to create a rental contract when arriving at a car rental facility to pick up the rental vehicle,. (See Patent Application; e.g., page 29, line 12 – page 30, line 11).

Claim 113 recites that this system comprises "a server system". (See Patent Application; e.g., page 7, lines 7-14; Figure 1 (reference number 14); page 7, line 18 – page 8, line 3; Figure 2 (reference number 28)).

Claim 113 further recites that this server system is configured to "host a website, the website comprising a plurality of web pages for access over a network by any of a plurality of client systems". (See Patent Application; e.g., page 7, line 15 – page 8, line 3; Figure 2 (reference numbers 26, 28 and 72, where reference number 28 identifies a server system, which includes a web server 62 that provides a website 72 for access by a client system 26); Figures 6A-6L show examples of web pages that can be part of the website).

Claim 113 also recites that this server system is configured to "create a rental vehicle reservation in response to data received through the website from a client system". (See Patent Application; e.g., page 10, lines 26-32).

Claim 113 also recites that this server system is configured to "store a reservation transaction, wherein the reservation transaction is representative of the created rental vehicle reservation". (See Patent Application; e.g., page 10, lines 26-32; page 29, lines 12-15; Figure 8 (reference number 642)).

Claim 113 further recites that this server system is configured to "electronically accept additional data from the user through the website for a potential rental of a rental vehicle based on the rental vehicle reservation". (See Patent Application; e.g., page 11, lines 17-31; page 18, lines 2-7; Figures 6F-6J).

Moreover, claim 113 recites that this server system is configured to "communicate an electronic rental proposal for display to the user on a web page of the website, the electronic rental proposal being based on the rental vehicle reservation and the accepted additional data". (See Patent Application; e.g., page 7, lines 10-12; Figure 1 (reference number 18); page 13, lines 20-22; Figure 6I).

Claim 13 recites that this server system is configured to "create an electronic rental contract for a rental vehicle in response to an electronic acceptance by the user of the electronic rental proposal, the electronic rental contract permitting the user to

avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract". (See Patent Application; e.g., page 7, lines 12-14; Figure 1 (reference number 4); page 13, lines 22-24; see also page 29, line 32 – page 30, line 4).

Further still, claim 113 recites that this server system is configured to "store a rental transaction, wherein the rental transaction is representative of the created electronic rental contract". (See Patent Application; e.g., page 28, lines 18-20; page 29, lines 3-23; Figure 8 (reference number 644)).

Lastly, claim 113 recites "wherein the server system is further configured to perform the additional data acceptance, the electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage **regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility**." (See Patent Application; e.g., page 31, lines 23-29; see also Figures 7A-7C which show the operation of the server system without there being a requirement that the customer have a master rental agreement (MRA)).

Thus, the inventions defined by independent claims 62 and 113 define a method and system which provide a user with the ability to not only create rental vehicle reservations with a rental car company but also create electronic rental contracts with the rental car company that are based on those reservations and permit a bypass of the rental counter by the user to expedite rental vehicle pickup **without requiring that the user have a pre-existing master rental agreement with the rental car company**. As described in the patent application at page 2, line 26 – page 3, line 13 and at page 31, line 23 – page 32, line 2), the inventions defined by claims 62 and 113 thus represent a new, useful, and nonobvious contribution over the prior art.

vi. Grounds of Rejection to be Reviewed on Appeal:

I. Whether claims 62-78, 113-127, 137, and 139 are indefinite under 35 USC 112, second paragraph.

II. Whether claims 62-78, 113-127, 137, and 139 are unpatentable under 35 U.S.C. 103; and more specifically:

(a) whether claim 62 (including any and all claims dependent therefrom) is obvious in view of the Hertz/Avis/HertzGold combination;

(b) whether claim 113 (including any and all claims dependent therefrom) is obvious in view of the Hertz/Avis/HertzGold combination;

(c) whether claim 65 is obvious in view of the Hertz/Avis/HertzGold combination;

(d) whether claim 115 is obvious in view of the Hertz/Avis/ HertzGold combination;

(e) whether claim 66 is obvious in view of the Hertz/Avis/HertzGold combination;

(f) whether claim 116 is obvious in view of the Hertz/Avis/HertzGold combination;

(g) whether claim 72 (including any and all claims dependent therefrom) is obvious in view of the Hertz/Avis/HertzGold combination;

(h) whether claim 122 (including any and all claims dependent therefrom) is obvious in view of the Hertz/Avis/HertzGold combination;

(i) whether claim 73 is obvious in view of the Hertz/Avis/HertzGold combination;

(j) whether claim 123 is obvious in view of the Hertz/Avis/HertzGold combination;

(k) whether claim 74 is obvious in view of the Hertz/Avis/HertzGold combination;

(l) whether claim 124 is obvious in view of the Hertz/Avis/HertzGold combination;

(m) whether claim 75 is obvious in view of the Hertz/Avis/HertzGold combination;

(n) whether claim 125 is obvious in view of the Hertz/Avis/HertzGold combination;

(o) whether claim 76 is obvious in view of the Hertz/Avis/HertzGold combination;

(p) whether claim 126 is obvious in view of the Hertz/Avis/HertzGold combination; and

(q) whether claim 139 is obvious in view of the Hertz/Avis/ HertzGold combination.

vii. Argument:

Applicant will now address the various rejections made in the March 17, 2011 Office Action from which this appeal is sought and explain why these rejections must be reversed on appeal.

I. The Examiner erred by rejecting claims 62-78, 113-127, 137, and 139 for indefiniteness under 35 USC 112.

The subject Office Action rejected claims 62-78, 113-127, 137[1], and 139 for alleged indefiniteness under 35 USC 112, second paragraph based on what Applicant interprets to be two grounds.

With the first ground, Applicant interprets the Office Action as alleging that the final paragraph in claims 62 and 113 render those claims (and all claims dependent therefrom) indefinite. For example, claim 62 recites: "wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility." Claim 113 includes a similar recitation.

Applicant interprets the Office Action as alleging that the phrase "whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility" renders this clause unclear. Page 3 of the Office Action states:

> It is known to one of ordinary skill in the art, rental car company has franchised their facilities, and, each franchisor can have their own rental agreement with local businesses. As currently claimed, it is not clear which pre-existing rental agreement (franchisee or rental car company) will be considered for generating a contract. (See March 17, 2011 Office Action; page 3).

[1] The March 17, 2011 Office Action identifies claim 136 instead of claim 137 on page 3, which Applicant presumes to be a typographical error.

Applicant notes that by its plain language, claims 62 and 113 are abundantly clear in scope as to what master rental agreements (MRAs) are described in the claim. Claims 62 and 113 describe an MRA that is between the "user" and "a rental car company that operates the car rental facility". Applicant respectfully submits that the nature of the "rental car company", whether it be a franchisee or not, is immaterial to the scope of claims 62 and 113. These clauses in claims 62 and 113 address a pre-existing MRA that binds the user and the rental car company that operates the car rental facility.

Thus, to assess whether the "user has a pre-existing master rental agreement with a rental car company that operates the car rental facility" one needs to simply (1) identify the user, (2) identify the rental car company that operates the car rental facility at which the user is to arrive to pick up the subject rental vehicle, and (3) determine if there is a pre-existing MRA that binds these two parties with respect to rentals. Thus, if the rental car company that operates that car rental facility is a franchisee of a franchisor rental car company and where the user has an MRA with the franchisor rental car company where this MRA does **not** operate to bind the franchisee rental car company that operates the subject car rental facility, then such an MRA would clearly outside the scope of the subject claim language. However, if the rental car company that operates that car rental facility is a franchisee of a franchisor rental car company and where the user has an MRA with the franchisor rental car company where this MRA does operate to bind the franchisee rental car company that operates the subject car rental facility, then such an MRA is within the scope of the subject claim language. Of course, if the user has an MRA directly with the franchisee rental car company that operates the subject car facility, such an MRA would also be within the scope of the subject claim language.

Therefore, Applicant respectfully submits that the Examiner clearly erred in rejecting claims 62-78, 113-127, 137, and 139 for alleged indefiniteness on this ground.

With the second ground, Applicant interprets the Office Action as asserting that the steps listed below render claim 62 indefinite (with similar recitations in claim 113 allegedly rendering claim 113 indefinite):

> creating a rental vehicle reservation in response to data received through the website from a client system;
> storing a reservation transaction within the server system, wherein the reservation transaction is representative of the created rental vehicle reservation;
> electronically accepting **additional data** from the user through the website for a potential rental of a rental vehicle based on the rental vehicle reservation;
> communicating an electronic rental proposal for display to the user on a web page of the website, the electronic rental proposal being based on the rental vehicle reservation **and the accepted additional data**;
> creating an electronic rental contract for a rental vehicle in response to an electronic acceptance by the user of the electronic rental proposal, the electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract;

The Examiner alleges:

> [I]t [is] is not clear whether the rental contract is created in the same session when the rental proposal is accepted by applicant, because [the] claimed invention in dependent claims solicits for additional information from the customer, [sic] As it is old and known that contract cannot be changed, but amended, there is a confusion whether the contract as claimed by the applicant is a contract or something else. (See March 17, 2011 Office Action; page 3).

First, Applicant notes that "whether the rental contract is created in the same session when the rental proposal is accepted by applicant" is immaterial to the definiteness of claims 62 and 113.

Second, the Office Action fails to articulate a reasonable or rational basis as to why a "same session" is relevant to the scope of claims 62 or 113. Applicant notes that

the "dependent claims" that solicit "additional information" do not have any bearing on this "same session" issue. While the Office Action does not identify which dependent claims are the source of the Examiner's statement, Applicant interprets the Office Action as referencing dependent claims 67-68, 74-76 and 78 (with respect independent claim 62) and dependent claims 117-118, and 124-127 (with respect to independent claim 113). These dependent claims recite various features with respect to the additional data that can be obtained for use with the rental proposal. Claims 62 are 113 are clear that the electronic rental proposal is "based on the rental vehicle reservation **and the accepted additional data**". Claims 62 are 113 are further clear that the electronic rental contract is created "in response to an electronic acceptance by the user of the electronic rental proposal". As such, these dependent claims which recite various features about the additional data upon which the electronic rental proposal can be based are not relevant to the Examiner's statement regarding a "same session" (nor are they relevant to the Examiner's statement about changes or modifications to the electronic rental contract).

Third, there is no confusion as to whether the "electronic rental contract" of claims 62 and 113 "is a contract or something else". By their plain language, claims 62 and 113 recite that an "electronic rental contract" is created in response to user acceptance of the "electronic rental proposal".

Therefore, Applicant respectfully submits that the Examiner clearly erred in rejecting claims 62-78, 113-127, 137, and 139 for alleged indefiniteness on this ground.

II. The Examiner erred by rejecting claim 62 for obviousness under 35 USC 103 based on the combination of the Hertz, Avis, and HertzGold references.

The March 17, 2011 Office Action rejected claim 62 for obviousness based on the combination of the Hertz, Avis, and HertzGold references.[2] This obviousness rejection is predicated on a clearly erroneous finding that the HertzGold reference discloses the following element of claim 62:

> wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed **regardless of** whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility.

As such, Applicant respectfully submits that the March 17, 2011 Office Action commits at least two errors in rejecting claim 62 for obviousness, any one of these errors mandating a reversal of the Examiner's rejection.

First, at page 7, the March 17, 2011 Office Action alleges that under the teachings of the HertzGold reference, a "user may or may not have a Master Rental Agreement" in order to be able to create an electronic rental contract as recited in claim 62 that permits the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract. Applicant respectfully submits that this error by the Examiner with respect to determining the scope and content of the prior art constitutes a reversible error in the obviousness rejection of claim 62.

Second, at page 2 of the March 17, 2011, the Examiner has also committed reversible error by misinterpreting the scope of claim 62. In the "Response to Arguments" section of page 2 of the March 17, 2011 Office Action, the Examiner evidences a misinterpretation of the "regardless of" language in Claim 62.

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[2] Applicant provides a copy of the Hertz reference in the Evidence Appendix at Exhibit 1. Applicant further provides a copy of the Avis reference and the HertzGold reference in the Evidence Appendix at Exhibits 2 and 3 respectively.

The Supreme Court has reinforced that the *Graham* factors lay the framework for addressing the question of whether a claimed invention is obvious. *KSR International Co. v. Teleflex Inc.*, 550 US 398, 406; 82 USPQ2d 1385, 1391 (U.S. 2007). These factors are:

> 1) "the scope and content of the prior art";
> 2) the "differences between the prior art and the claims";
> 3) "the level of ordinary skill in the pertinent art"; and
> 4) objective evidence of nonobviousness.
> *Takeda Chemical Industries Ltd. v. Alphapharm Pty. Ltd.*, 492 F.3d 1350, 1355; 83 USPQ2d 1169, 1174 (Fed. Cir. 2007) (quoting *KSR*).

As to the first *Graham* factor, the Examiner's rejection of claim 62 evidences a failure to properly interpret the scope and content of the prior art. As noted above, page 7 of the Office Action demonstrates that the Examiner has interpreted the HertzGold reference to mean that a HertzGold "user may or may not have a Master Rental Agreement" in order to be able to create an electronic rental contract as recited in claim 62. That is, the Examiner alleges that a Hertz customer who does not have a pre-existing MRA with Hertz is able to take interact with the Hertz website through the program described in HertzGold to create an electronic rental contract that permits such customer to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract. Applicant respectfully submits that this interpretation of HertzGold is erroneous and contrary to the evidence of record in this patent application.

The HertzGold reference describes a program by which Hertz will automatically invite members of its #1 Club program to join the higher #1 Club Gold program if the #1 Club customer has completed 4 rentals. Page 2 of the HertzGold reference states:

> Hertz has enhanced the benefits of #1 Club service by allowing existing and new members to earn free membership in Hertz #1 Club Gold service. Upon completion of four rentals, #1 Club members will be **invited to join** #1 Club Gold and be eligible for Five Star and President's Circle, depending on rental activity. In addition, #1 Club members who rent a

> minimum of four times annually can avoid the $50 annual fee for #1 Club Gold membership.
>
> After implementing #1 Club service, Hertz recognized the additional customer benefit to not only keeping an active profile on customers, but also allow customers to **bypass the counter** altogether, with the keys and **completed rental agreement ready and waiting for them**.
>
> So in 1989, Hertz became the first car rental company to offer customers a premier, expedited rental service with preassigned vehicles sheltered under weather-protected canopies. **With Hertz #1 Club Gold, members have no rental agreements to sign and simply arrive at Hertz locations, with the car ready to go**.

Applicant respectfully submits that the HertzGold reference merely teaches that Hertz customers that are members of Hertz's #1 Club program will be invited to join the #1 Club Gold program, with a waiver of a membership fee, after those customers complete 4 rentals. Once members of Hertz's #1 Club Gold program, such customers would be entitled to an ability to expedite a rental by avoiding a need to sign a rental agreement when they arrive at a Hertz location to pick up a rental vehicle.

Importantly, however, with respect to claim 62, the evidence of record in this patent application shows that to become a member of the "Hertz #1 Club Gold" program, a customer is required to enter into an MRA with Hertz.[3] As such, the counter bypass capability described in the HertzGold reference is only available to Hertz customers who have a pre-existing MRA with Hertz. Thus, the HertzGold reference does not disclose anything qualitatively different than the conventional reservation methods described in the "Background" section of the patent application. (See Patent Application; p. 2, lines 26-31). It was against this backdrop that Applicant developed embodiments of the invention of claim 62. "Known conventional reservation methods do not permit a user to complete and store an electronic rental agreement for a vehicle without employing a pre-existing master rental agreement." (See Patent Application; p. 3, lines 6-8 (emphasis added)).

[3] Applicant explains this point below with reference to the evidence in this patent application.

Thus, in stark contrast to HertzGold, claim 62 recites that "the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility." As such, the method of claim 62 permits a user who does not have a pre-existing master rental agreement with the subject rental car company to create an "electronic rental contract", where the electronic rental contract permits "the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" as recited in claim 62. HertzGold, not only completely lacks this element of claim 62, but also by limiting counter bypass capability to only customers with pre-existing MRAs, teaches away from the invention of claim 62. Proceeding contrary to that which is taught by the cited references, and HertzGold in particular, the invention of claim 62 greatly expands the universe of users who have the ability "to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract". Given this shortcoming of the cited references, Applicant respectfully submits that claim 62 is patentable.[4]

[4] Applicant further notes that the Hertz reference and the Avis reference enclosed as Exhibits 1 and 2 fail to bridge this gap between claim 62 and HertzGold. It is Applicant's understanding that the Examiner is in agreement on this issue because the Examiner relies on HertzGold and not Hertz or Avis for alleged teachings regarding the subject feature of claim 62. Nevertheless, Applicant points out that the Hertz and Avis references merely describe websites by which a user can book a rental vehicle reservation and do not describe a method or system capable of permitting a user to create an electronic rental contract from a rental vehicle reservation into.

Evidentiary Basis for the MRA Requirement Regarding Hertz #1 Club Gold:

As stated above, the evidence of record in this patent application demonstrates that to become a member of the Hertz #1 Club Gold program, a user needs to enter into an MRA with Hertz. Exhibits 4-7 included within the Evidence Appendix demonstrate the basis for Applicant's understanding in this regard.[5]

- Exhibit 4 is a copy of the "Hertz Services: #1 Club Gold, "United States Programs" reference, from web.archive.org/web/19970403234524/ www.hertz.com/serv/us/program_gold.html, 1 page".
- Exhibit 5 is a copy of the "Hertz #1 Club Gold, "The fast, easy way to rent a car around the world" reference, from web.archive.org/web/1998070194845/ www.hertz.com/serv/us/gold/learnmore.html, 2 pages".
- Exhibit 6 is a copy of the "Hertz #1 Club Gold Screenprints reference from web.archive.org for www.hertz.com from July 2, 1998, accessed from web.archive.org on September 29, 2010, 10 pages".

In connection with Hertz #1 Club Gold program, Exhibit 4 states "[u]pon enrollment you complete a single master enrollment agreement, in which you tell us your preferred car type, optional coverages, and your preferred method of payment. Hertz then maintains this information for you, so that whenever you arrive at the Gold location, all necessary information will have already been transmitted for your rental." (See Exhibit 4 (emphasis added)).

Exhibit 5 corroborates this when it explains how to enroll in the Hertz #1 Club Gold:

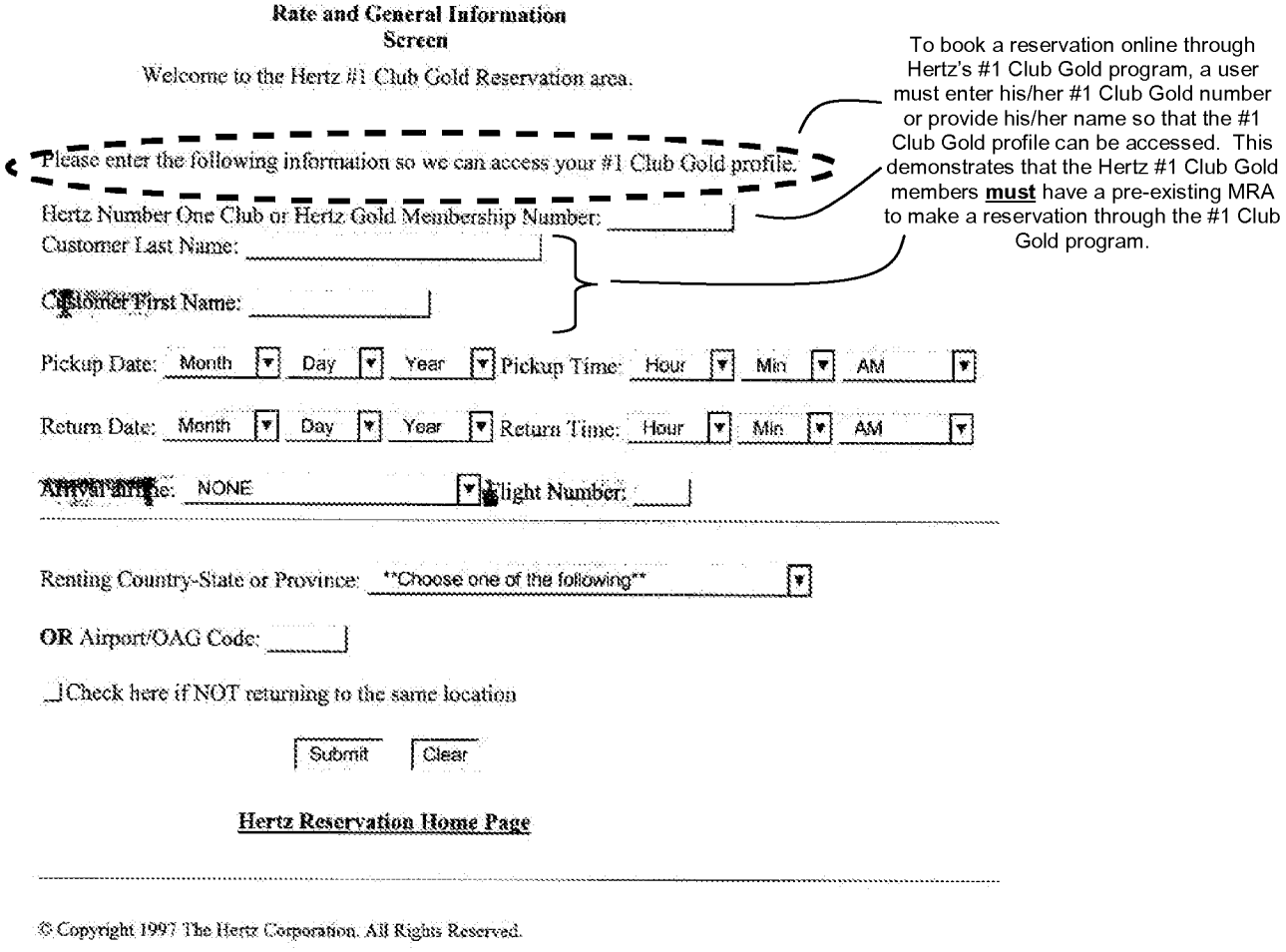
[5] These exhibits were entered into the record as Exhibits 4-7 with Applicant's "Amendment with Request for Continued Examination (RCE)" filed October 1, 2010. Furthermore, the references that constitute these exhibits are also part of this patent application's Information Disclosure Statement (IDS) record (see Applicant's IDS's from January 2009 and October 2010).

> **Enroll today for fast, easy car rentals.**
> Just print out a copy of the Hertz #1 Club Gold Enrollment Agreement. Once you enroll, indicating your preferred car type, optional coverages and payment method, your rental information is stored in the Hertz global computer database. Then, when you call at least 2 hours in advance, your paperwork will be waiting when you arrive at the rental location.
>
> After you print out the Enrollment Agreement, remember to complete the entire agreement, sign and mail or fax to Hertz #1 Club Gold. We look forward to welcoming you soon as a new Hertz #1 Club Gold member! (See Exhibit 5)

Furthermore, Exhibit 6 provides similar corroboration (see page 5 of Exhibit 6) and also identifies the "Rental Terms & Conditions" for the Hertz #1 Club Gold MRA (see pages 6-10 of Exhibit 6).

After a customer signs the MRA to become enrolled in the Hertz #1 Club Gold program, that customer can then use the Hertz website to book rentals in accordance with the service described by HertzGold. Exhibit 7 included herewith (which is a copy of the "Hertz Rate and General Information, "Rate and General Information Screen", from web.archive.org/web/199704032325…rtz.com/InteractiveRes/htm..., 1 page" reference) identifies an online screen that a Hertz customer would use for this purpose. A copy of the screenprint is reproduced below. **As can be seen, this screen requires the customer to enter his/her Hertz #1 Club Gold membership number to proceed (or enter his/her name so that the customer's membership in the Hertz #1 Club Gold program can be confirmed).** Therefore, Exhibit 7 demonstrates that Hertz #1 Club Gold membership (and thus a pre-existing MRA) is a **requirement** to take advantage of the counter bypass features described by HertzGold. As stated above, this requirement is completely contrary to claim 62 which recites that "the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed **regardless of** whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility". Instead, it is clear from this evidence that is undisputed by the Examiner that the computer systems that support the program described by the HertzGold program will permit the creation of

an electronic rental contract for a rental transaction only if the user has a pre-existing MRA with Hertz, and **NOT** "**regardless of** whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility" as recited in claim 62.



Therefore, by committing error with respect to the first prong of the *Graham* test, whereby the Examiner has misunderstood the scope and content of the prior art, the Examiner has failed to establish a prima facie case for the obviousness of claim 62, and the Examiner's rejection of claim 62 for alleged obviousness must be reversed.

As to the second *Graham* factor, the Examiner's rejection of claim 62 evidences a failure to properly ascertain the differences between the prior art and claim 62

because the Examiner has misinterpreted claim 62. In the "Response to Arguments" section of page 2 of the March 17, 2011 Office Action, the Examiner states:

> In response to applicant's argument that cited references do not teach the claimed invention because it is applicant's belief that cited reference require customers to sign a Master Rental Agreement, as such counter bypass is only available to Hertz Customers who have a pre-existing Master Rental Agreement.
>
> However, applicant's claimed invention does not limit the customers to be customers who do not have Master Rental Agreement. Applicant claimed invention includes **all** customers (customers with and without Master Rental Agreement). As currently claimed, cited reference teaches capability and concept for allowing customers to rent a car by bypassing rental counter. (See March 17, 2011 Office Action; page 2 (emphasis added)).

Applicant respectfully submits that this statement in the Office Action is a mischaracterization of claim 62. It is Applicant's understanding from this statement that it is the Examiner's position that (1) because the method of claim 62 permits users who have a pre-existing MRA with the subject rental car company to create the subject electronic rental contract to avoid doing so at the rental counter when picking up the subject rental, and (2) because the HertzGold reference describes a program whereby customers with a pre-existing MRA can avoid signing a rental agreement at a rental counter when picking up a rental vehicle, this means that claim 62 encompasses the prior art. However, Applicant respectfully submits such an interpretation by the Examiner constitutes a fundamental error by the Examiner regarding the scope of claim 62 with respect to the "regardless of" language.

More particularly, claim 62 recites a method comprising the various recited steps, "wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps **are performed regardless of whether** the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility." Thus, Applicant respectfully submits that the relevant question about the difference between the prior art and claim 62, when properly interpreted, is whether

the prior art as taught by the cited references condition the performance of "the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps" on the user having a pre-existing MRA with the rental car company that operates the subject car rental facility. As explained above (see in particular the screenshot from Exhibit 7 as reproduced above), it is clear that the HertzGold reference teaches that such steps are conditioned on the user having such an MRA, which is completely contrary to the invention defined by claim 62 whereby certain method steps "are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility."

Therefore, by committing error with respect to the second prong of the *Graham* test, whereby the Examiner has misunderstood the differences between the prior art and claim 62, the Examiner has failed to establish a prima facie case for the obviousness of claim 62, and the Examiner's rejection of claim 62 for alleged obviousness must be reversed.

Lastly, regarding the third *Graham* factor, the Examiner also committed reversible error by not making any findings regarding the "the level of ordinary skill in the pertinent art". Instead, the March 17, 2011 Office Action makes only conclusory allegations that "one having ordinary skill in the art" would find certain claim features obvious. Applicant respectfully submits that such unsupported conclusory statements are not adequate to support an obviousness rejection as explained by the Supreme Court in *KSR*. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

III. The Examiner erred by rejecting claim 113 for obviousness under 35 USC 103 based on the combination of the Hertz, Avis, and HertzGold references.

The March 17, 2011 Office Action also rejected claim 113 for obviousness based on the combination of the Hertz, Avis, and HertzGold references. While claim 113 is a system claim and claim 62 is a method claim, Applicant respectfully submits that claim 113 is patentable over the cited references for the same reasons expressed above in connection with claim 62. More specifically, Applicant asserts that the Examiner has failed to establish a prima facie case that the cited references, when considered individually or in combination, disclose the following feature of claim 113:

> wherein the server system is further configured to perform the additional data acceptance, the electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage **regardless of whether** the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility.

Once again, a detailed discussion of the shortcomings of the cited references, particularly the HertzGold reference which the Examiner had cited to support the alleged teaching of the above-quoted claim feature, is presented above in connection with claim 62.

More particularly to system claim 113, Applicant notes that the HertzGold reference completely fails to disclose a "server system" that is "configured to perform the additional data acceptance, the electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage **regardless of whether** the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility." As evidenced by the screenprint shown in Exhibit 7, it is clear that the server system and reproduced above, the server system taught by HertzGold conditions at least the "electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage" on the user having a pre-existing MRA with Hertz because the screenprint shows that a user must provide

information that permits the server system of the HertzGold reference to lookup the customer's #1 Club Gold program membership and hence MRA pre-existence.

Furthermore, Applicant notes that the recitations in claim 113 regarding the configurations of the server system must be given patentable weight during examination. That is, no features recited in the body of claim 113 constitute "nonfunctional descriptive material" (NFDM). Applicant notes that page 11 of the previous Decision on Appeal rendered in this patent application with respect to a claim that is no longer pending in this patent application included the following in passing as dicta[6]:

> Finally, even were a court to find that a specific instance of an agreement in Hertz were not a contract, we find there would be no patentable distinction between such an arrangement by Hertz and a contract as such, because any such distinction would be predicated entirely upon the nonfunctional descriptive contents of the agreement. *See Ngai*, 367 F.3d at 1339.

However, claim 113 recites that the "server system" is configured to perform certain operations "**regardless of whether** the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility". Thus, the "server system" of claim 113 has positively recited features with functional effects.

Further still, the recitation in claim 113 that the "electronic rental contract" permits "the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" must also be given patentable weight during the examination of claim 113 because it does not constitute NFDM. The Court of Customs and Patent Appeals (CCPA) and Federal Circuit have repeatedly found that for a claim element to constitute functional descriptive material (which enjoys patentable weight during examination), rather than

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[6] Applicant further notes that the issues at dispute in the previous appeal has now been rendered moot in view of the changes that have been made to the claims and the evidentiary record of the patent application that has been supplemented since the time of the Decision on Appeal (e.g., see Exhibit 8 enclosed herewith which was filed on April 18, 2008).

NFDM, the claim element need only provide functionality with respect to the end use of a claimed system.

For example, the invention at issue in the case *In re Miller*, 418 F.2d 1392, 164 USPQ 46 (CCPA 1969) involved cooking receptacles (e.g., measuring cups) with graduated measurement labels positioned thereon. The only difference between Miller's device claim and a prior art measuring cup was in the content of the printed matter on the graduated measurement labels. With conventional prior art measuring cups, the printed matter on the labels reflected accurate measurements (e.g., ¼, ½, and ¾ cup measurements). With the claimed invention, the printed matter on the labels reflected intentionally "false" measurements that permitted a cook to prepare foods for a fractional recipe without doing the arithmetic necessary to translate, say, a recipe intended to serve 3 people that requires 2/3 of a cup of flour to serve only a single person. Rather than requiring the cook to mentally calculate 1/3 of 2/3 and then estimate where 2/9 would fall on a measuring cup that perhaps does not have a 2/9 graduation, the invention provides a measuring cup with a label that would effectively read "For Use with 1/3 Recipes" or the like and a "false" graduated measurement label that identifies a 2/3 measurement for what is in fact a 2/9 measurement. In this way, the cook can simply select the appropriately-labeled cooking receptacle for the desired fractional recipe amount and then proceed to follow the recipe's stated measurement amounts without doing any potentially confusing computations that are fractions of fractions. During examination, the USPTO refused to give any patentable weight to the content of the printed matter on the receptacle's labels and thus concluded that the device claims were unpatentable in view of conventional cooking receptacles. On appeal, the court reversed the USPTO and found that the device claims were patentable over such conventional cooking receptacles even though the only difference relative to conventional cooking receptacles was in the content of the printed matter on the labels. "Appellant has provided equipment – articles of manufacture, under the statute, 35 USC §101 – adapted to ameliorate the mental strain on cooks." *Miller*, 418 F.2d at 1394; 164 USPQ at 46-47. In response to arguments by the USPTO that

printed matter cannot serve to patentably distinguish an invention over the prior art (essentially on a NFDM rationale), the court disagreed with the USPTO and held that:

> [The examiner's] characterization of printed matter as 'unpatentable' is beyond the point; no attempt here is being made to patent printed matter as such. The fact that printed matter by itself is not patentable subject matter, because non-statutory, is no reason for ignoring it when the claim is directed to a combination. Here there is a **new and unobvious functional relationship** between a measuring receptacle, volumetric indicia thereon indicating a volume, and a legend indicating the ratio, and in our judgment the appealed claims properly define this relationship. … [W]e therefore deem sections 102 and 103 to be satisfied. *Miller*, 418 F.2d at 1396; 164 USPQ at 49. (emphasis added)

Applicant further notes that the printed matter in the *Miller* case did not need to structurally affect the receptacle itself (for example, the receptacle held ingredients no matter what the printed matter was on the labels), **it only needed to affect the functional use of the invention by a person** (by serving to "ameliorate the mental strain on cooks") to provide patentable weight (see *Miller*, 418 F.2d at 1394; 164 USPQ at 46-47)). See also *In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983) (holding that a band with digits printed thereon was patentable over a prior art band with digits printed thereon because the digits printed on the invention (unlike the prior art band) constituted a sequence of digits that conveyed the appearance of an endless loop to a user); *In re Lowry*, 32 F.3d 1579, 1583-84; 32 USPQ2d 1031, 1034 (Fed. Cir. 1994) (finding that the printed matter concept has no application to electronic data structures that are functionally intertwined with the operation of an invention).

In *Gulack*, the court found that by conveying the appearance of an endless loop of numbers to a user, the digits printed on the band provided a functional relationship with respect to the band to support patentability. *Gulack*, 703 F.2d at 1386-87; 217 USPQ at 405.

> Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. Under section 103, the board cannot dissect a claim,

> excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole." Id. at 1385.

Citing *Miller*, the court found that "the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate." *Gulack*, 703 F.2d at 1386; 217 USPQ at 404. However once again, the court found that the functional relationship with respect to the substrate that was sufficient to provide patentable weight was a relationship that affected how the user interacts with the substrate.

The elements in claim 113 reciting that the "electronic rental contract" permits "the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" are inescapably intertwined with a functional effect of claim 113. The system of claim 113 can create an electronic rental contract for a user that permits such user to "avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract", which ameliorates inconveniences for the user when picking up a rental vehicle. Thus, the system of claim 113 provides a user with opportunities and capabilities that did not exist before because the system of claim 113 lets a user create an "electronic rental contract" that permits "the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" even if the user does not have a pre-existing MRA with the subject rental car company. As such, the "electronic rental contract" elements in claim 113 must be given patentable weight during examination as indicated by the *Miller*, *Gulack* and *Lowry* cases.[7]

Moreover, the *Ngai* case (*In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004)) is not relevant to this patent application because *Ngai* addressed a situation

[7] Furthermore, to the extent that NFDM doctrine has any relevance to method claims, Applicant further asserts the same position in connection with method claim 62.

where the alleged descriptive material did not have an interrelationship with the other components of the invention. The claim at issue in *Ngai* recited a combination of certain known RNA components and instructions for how the components can be combined. It was on this basis that the Federal Circuit distinguished the claim at issue in *Ngai* from the *Gulack* case:

> This case [*Ngai*], however, is dissimilar from *Gulack*. There the printed matter and the circularity of the band were interrelated, so as to produce a new product useful for "educational and recreational mathematical" purposes. *Ngai*, 367 F.3d at 1339; 70 USPQ2d at 1864 (emphasis added).

With claim 113, as with *Gulack* and unlike *Ngai*, the combination of the server system recited in claim 113 and the "electronic rental contract" features recited in claim 113 are interrelated so as to produce a new product useful for expediting users' rental experiences – namely, a server system that is configured to permit a user to create the recited electronic rental contract regardless of whether the user has a pre-existing MRA with the subject rental car company and thus be able to "avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract"; something that is not known in the prior art as explained above.

Further still, even if it were assumed for the sake of argument that claim 113's recitation of the "electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" is not entitled to patentable weight during examination, Applicant respectfully submits that claim 113 would still be patentable over the cited references. That is, even if claim 113's recitation of the "electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract" were deemed NFDM, it is still unquestioned that claim 113 recites a server system configured to create and store two

different types of transactions (the first type of transaction being a reservation transaction and the second type of transaction being a rental transaction). Thus, claim 113 recites that the server system is configured to perform certain operations relating to the creation of the second type of transaction regardless of whether the user has a pre-existing MRA with the subject rental car company. By contrast, the cited references condition performance of operations relating a second type of transaction on the user having a pre-existing MRA with the subject rental car company, as explained above. As such, Applicant respectfully submits that claim 113 is patentable over the cited references even if the recited "electronic rental contract" features were deemed NFDM.[8]

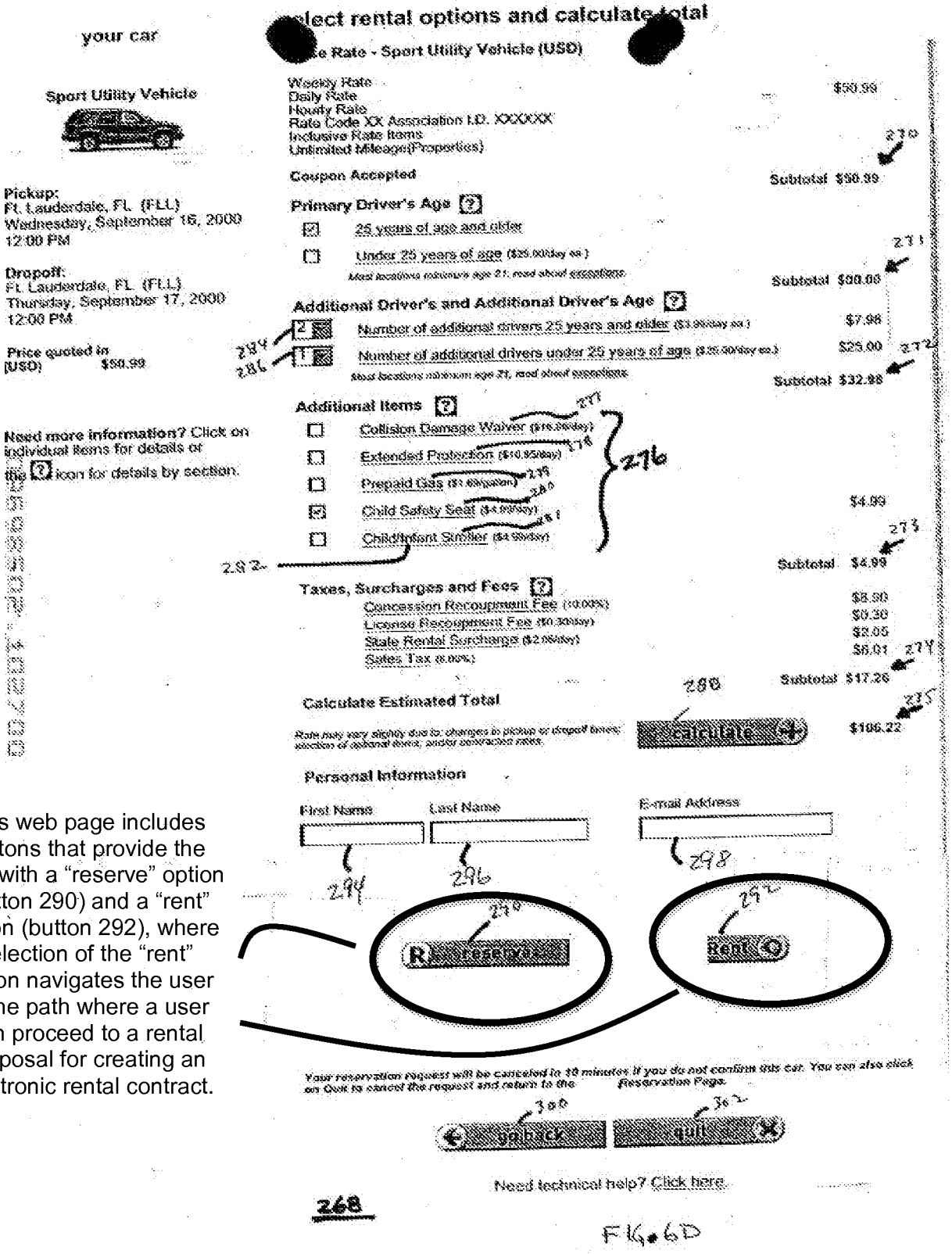
IV. The Examiner erred by rejecting dependent method claim 65 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 65 further limits the method of claim 62 (by way of claim 64) to recite the following steps:

> after the reservation creating step, providing a **web page** of the website to the client system for display thereon that is **configured to** provide the user with **a user-selectable option to only create the reservation *and* a user-selectable option to convert the created reservation into an electronic rental contract**; and
>
> wherein the input receiving step comprises receiving a user selection of the option to convert the created reservation into an electronic rental contract, thereby advancing the user to the web page that is configured to solicit the additional data from the user.

Figure 6D of the patent application reproduced below with annotations provides an illustrative example of how the features recited in claim 65 can be implemented (see also Patent Application at page 24, line 22 – page 25, line 3).

[8] Again, to the extent that NFDM doctrine has any relevance to method claims, Applicant further asserts the same position in connection with method claim 62.



This web page includes buttons that provide the user with a “reserve” option (button 290) and a “rent” option (button 292), where selection of the “rent” option navigates the user to the path where a user can proceed to a rental proposal for creating an electronic rental contract.

The cited references are completely silent regarding such features. Pages 7-8 of the March 17, 2011 Office Action cited the Hertz and Avis references against the first paragraph of claim 65 and the HertzGold reference against the second paragraph of claim 65. However, at no point do the Hertz or Avis references describe a web page having the two "reserve" and "rent" user-selectable options recited in claim 65. The outstanding Office Action attempts to bridge this gap with a conclusory statement that such a feature would be obvious because buttons on web pages in general are well-known in the art, but Applicant respectfully submits that this type of conclusory statement constitutes reversible error because it fails to not only appreciate the claim as a whole but fails to provide any rationale as to why a person having ordinary skill in the art would find it obvious to fundamentally change the mode of operation of the Hertz and Avis references to transition from reservation-only websites to reservation-or-rental contract websites. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

Moreover, the HertzGold reference is further lacking with respect to claim 65 because there is no evidence that HertzGold contemplates a choice after a reservation has been created that a user can proceed to convert that reservation into a rental contract electronically. Instead, the user provides information sufficient to identify the existence of the user's MRA and simply follows the normal reservation procedures.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 65 for obviousness.

V. The Examiner erred by rejecting dependent system claim 115 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 115 further limits the system of claim 113 (by way of claim 114) to recite features similar in nature to claim 65. As such, Applicant respectfully submits that claim 115 is patentable over the cited references for the same reasons expressed above in connection with claim 65. Applicant further notes that no elements of system claim 115

constitute NFDM because claim 115 recites the different functional effects of the two user-selectable options that are recited in claim 115.

VI. The Examiner erred by rejecting dependent method claim 66 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 66 further limits the method of claim 62 to recite the following steps:

> after the reservation creating step, sending an email to the user, wherein the email comprises (1) a confirmation of the created reservation, and (2) a **user-selectable link** that is effective upon user selection to link the user to the web page that is **configured to solicit the additional data from the user**; and
>
> wherein the input receiving step comprises receiving a user selection of the link.

As such, this claim describes a method whereby a user can book a rental vehicle reservation and then enter the path for creating an electronic rental contract from a confirmation email. (See Patent Application at page 12, lines 11-15).

The cited references are completely silent regarding such features. Pages 8-9 of the March 17, 2011 Office Action entered a conclusory obviousness rejection of this claim with the Examiner stating, without any evidentiary support, that "sending confirmation emails to customer with active links is old and known technique…". Such a rejection constitutes reversible error. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

None of the cited references teach the features recited in claim 66. Moreover, even if one were to assume for the sake of argument that "sending confirmation emails to customer with active links is old and known technique", this knowledge does not render claim 66 obvious because there is still no teaching in the prior art for the combination of such technology within the method of claim 66 as a whole, including the recited "user-selectable link", whereby a user is able to create a rental vehicle

reservation and then enter a website path for creating an electronic rental contract via a confirmation email for the reservation.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 66 for obviousness.

VII. The Examiner erred by rejecting dependent system claim 116 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 116 further limits the system of claim 113 to recite features similar in nature to claim 66. As such, Applicant respectfully submits that claim 116 is patentable over the cited references for the same reasons expressed above in connection with claim 66. Applicant further notes that no elements of system claim 116 constitute NFDM because claim 116 recites a functional effect for the user-selectable link recited in claim 116.

VIII. The Examiner erred by rejecting dependent method claim 72 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 72 depends from claim 71, which in turn depends from independent claim 62. Claims 71 and 72 thus recite the following steps in combination with the steps of claim 62:

> for a user who has a pre-existing master rental agreement with the rental car company, (1) providing a web page of the website to a client system for display thereon that is configured to solicit the data for creating the reservation from the user, and (2) automatically pre-filling at least a portion of the data for creating the reservation into that web page from the master rental agreement [from claim 71]
>
> **permitting the user to electronically modify the pre-filled data without modifying the master rental agreement** [from claim 72].

As such, this claim describes a method whereby those users who do have pre-existing MRAs can use the information in these MRAs to expedite the reservation creation process through data pre-filling, but where the user is still free to modify such

pre-fills without causing a concomitant modification of the MRA. (See Patent Application at page 17, line 24 – page 18, lines 2; page 17, line 3, lines 16-18; page 31, lines 29-33).

The cited references fail to disclose this combination of features in combination with the features of claim 62. Page 9 of the March 17, 2011 Office Action entered a wholly conclusory obviousness rejection of claim 72 with the Examiner simply stating that the cited references teach the features of claim 72 without any evidentiary support. Such a rejection with a complete lack of articulation constitutes reversible error. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

Even if one assumes that the combined Hertz/Avis/HertzGold references disclose the concept of pre-filling reservation data from a user's MRA, there is no indication that these references further provide users with the ability to not only modify such pre-filled data but also do so without modifying the MRA.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 72 for obviousness.

IX. The Examiner erred by rejecting dependent system claim 122 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 122 further limits the system of claims 113 and 121 and thus recites features similar in nature to claim 72. As such, Applicant respectfully submits that claim 122 is patentable over the cited references for the same reasons expressed above in connection with claim 72. Applicant further notes that no elements of system claim 122 constitute NFDM because claim 122 recites configurations relating to the functional operation of the subject system.

X. The Examiner erred by rejecting dependent method claim 73 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 73 depends from claim 72 discussed above, and recites the following steps:

> receiving a modification of the pre-filled data from the user through the website;
> electronically notifying the user with a selectable option to keep the modification and a selectable option to revert to the pre-filled data;
> receiving a selection of one of the two options from the user; and
> using data for the reservation based on the received option selection.

As such, this claim describes a method whereby those users who do have pre-existing MRAs can be notified about modifications from data pre-fills and be given an option for reverting back to the MRA-based pre-fills. (See Patent Application at page 17, lines 30-32).

The cited references are completely silent regarding such features. Page 10 of the March 17, 2011 Office Action entered a wholly conclusory obviousness rejection of claim 73 with the Examiner simply stating that the cited references teach the features of claim 73 without any evidentiary support. Such a rejection with a complete lack of articulation constitutes reversible error. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

XI. The Examiner erred by rejecting dependent system claim 123 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 123 further limits the system of claims 113 and 122 and thus recites features similar in nature to claim 73. As such, Applicant respectfully submits that claim 123 is patentable over the cited references for the same reasons expressed above in connection with claim 73. Applicant further notes that no elements of system claim 123

constitute NFDM because claim 123 recites configurations relating to the functional operation of the subject system.

XII. The Examiner erred by rejecting dependent method claim 74 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 74 further limits the method of claim 62 as follows:

> 74. The method of claim 62 wherein the additional data comprises driver's license information for the user, the method further comprising performing the following steps before the communicating step:
> electronically performing a validation operation on the driver's license information such that the communicating step is **not** performed should the validation operation indicate the driver's license information is invalid; and
> should the validation operation indicate the driver's license information is invalid, electronically requesting that the user re-submit new driver's license information.

As such, this claim describes a method where the website obtains driver's license information from the user in response to the user following the rental contract path of the website, and where this driver's license information is validated before permitting the user to create the electronic rental contract. Thus, even though the rental car company may not have foreknowledge of the user (such as the type of foreknowledge that would result from a pre-existing MRA), the rental car company can develop a comfort with the user through the recited "validation operation" on the user's "driver's license information". (See Patent Application; Figure 6F (reference numbers 320-324); page 19, lines 1-5; page 25, lines 4-22; Figure 7B).

The cited references fail to disclose this combination of features in combination with the features of claim 62. Page 10 of the March 17, 2011 Office Action entered a conclusory obviousness rejection of this claim with the Examiner stating, without any explanation that the Hertz and HertzGold references teach the validation step of claim 74. Such a rejection constitutes reversible error. See *KSR*, 550 US at 418; 82 USPQ2d

at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements")).

Neither Hertz nor HertzGold (nor Avis) disclose any web page screens where a user is solicited for driver's license information, much less disclose a step of "electronically performing a validation operation on the driver's license information such that the communicating step is **not** performed should the validation operation indicate the driver's license information is invalid" as recited in claim 74. Instead, pages 9-10 of the Hertz reference merely describe the conventional technique of a user presenting a driver's license to personnel at a rental counter when picking up a rental vehicle (where the personnel might initiate a validation operation on the driver's license information). Thus, the cited references do not describe the performance of an electronic validation operation on a user's driver's license while the user is interacting with the website to create an electronic rental contract.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 74 for obviousness.

XIII. The Examiner erred by rejecting dependent system claim 124 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 124 further limits the system of claim 113 to recite features similar in nature to claim 74. As such, Applicant respectfully submits that claim 124 is patentable over the cited references for the same reasons expressed above in connection with claim 74. Applicant further notes that no elements of system claim 124 constitute NFDM because claim 124 recites configurations relating to the functional operation of the subject system based on the driver's license information.

XIV. The Examiner erred by rejecting dependent method claim 75 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 75 further limits the method of claim 62 as follows:

> 75. The method of claim 62 wherein the additional data comprises credit card payment information for the user, the method further comprising performing the following steps before the communicating step:
> electronically performing a validation operation on the credit card payment information such that the communicating step is **not** performed should the validation operation indicate the credit card payment information is invalid; and
> should the validation operation indicate the credit card payment information is invalid, electronically requesting that the user re-submit new credit card payment information.

As such, this claim describes a method where the website obtains credit card payment information from the user in response to the user following the rental contract path of the website, and where this credit card payment information is validated before permitting the user to create the electronic rental contract. Thus, even though the rental car company may not have foreknowledge of the user (such as the type of foreknowledge that would result from a pre-existing MRA), the rental car company can develop a comfort with the user through the recited "validation operation" on the user's "credit card payment information". (See Patent Application; Figure 6J (reference numbers 466-472); page 11, lines 25-27; page 22, lines 22-28; Figure 7C (reference numbers 619-620)).

The cited references fail to disclose this combination of features in combination with the features of claim 62. Pages 10-11 of the March 17, 2011 Office Action entered a conclusory obviousness rejection of this claim with the Examiner stating, without any evidentiary support, that "validating credit card prior to confirming an order is old and known to one of ordinary skill in the art". Such a rejection constitutes reversible error. See *KSR*, 550 US at 418; 82 USPQ2d at 1396 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere

conclusory statements")). The Examiner has failed to articulate any rationale as to why a person having ordinary skill in the art would have found it obvious to condition further progress within a website path for creating an electronic rental contract on credit card payment validation.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 75 for obviousness.

XV. The Examiner erred by rejecting dependent system claim 125 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 125 further limits the system of claim 113 to recite features similar in nature to claim 75. As such, Applicant respectfully submits that claim 125 is patentable over the cited references for the same reasons expressed above in connection with claim 75. Applicant further notes that no elements of system claim 125 constitute NFDM because claim 125 recites configurations relating to the functional operation of the subject system based on the credit card payment information.

XVI. The Examiner erred by rejecting dependent method claim 76 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 76 further limits the method of claim 62 as follows:

> 76. The method of claim 62 wherein the additional data comprises driver's license information for the user and credit card payment information for the user, the method further comprising performing the following steps before the communicating step:
>
> electronically performing a first validation operation on the driver's license information such that the communicating step is **not** performed should the first validation operation indicate the driver's license information is invalid;
>
> should the first validation operation indicate the driver's license information is invalid, electronically requesting that the user re-submit new driver's license information;
>
> electronically performing a second validation operation on the credit card payment information such that the communicating step is **not**

performed should the second validation operation indicate the credit card payment information is invalid; and

should the second validation operation indicate the credit card payment information is invalid, electronically requesting that the user re-submit new credit card payment information.

As such, this claim describes a method with the combined features of claims 74 and 75, where the website obtains driver's license information and credit card payment information from the user in response to the user following the rental contract path of the website, and where this driver's license information and credit card payment information is validated before permitting the user to create the electronic rental contract. Thus, even though the rental car company may not have foreknowledge of the user (such as the type of foreknowledge that would result from a pre-existing MRA), the rental car company can develop a comfort with the user through the recited validation operations on the user's "driver's license information" and "credit card payment information". (See Patent Application as discussed above in connection with claims 74 and 75).

The cited references fail to disclose this combination of features in combination with the features of claim 62. Pages 11-12 of the March 17, 2011 Office Action entered a conclusory obviousness rejection of this claim relying on the previous rejections of claims 74 and 75, and thus failing to consider claim 76 as a whole which recites the combination of the two validation operations to provide enhanced security for a rental car company.

As such, Applicant respectfully submits that the Examiner also erred by rejecting claim 76 for obviousness.

XVII. The Examiner erred by rejecting dependent system claim 126 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 126 further limits the system of claim 113 to recite features similar in nature to claim 76. As such, Applicant respectfully submits that claim 126 is patentable

over the cited references for the same reasons expressed above in connection with claim 76. Applicant further notes that no elements of system claim 126 constitute NFDM because claim 126 recites configurations relating to the functional operation of the subject system based on the driver's license information and credit card payment information.

XVIII. The Examiner erred by rejecting dependent method claim 139 for obviousness under 35 USC 103 based on the Hertz/Avis/HertzGold combination.

Claim 139 depends from claim 62 and recites:

> 139. The method of claim 62 wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed for a user who does **not** have a pre-existing master rental agreement with the rental car company.

Thus, while claim 62 describes a method where "the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility", claim 139 recites a method where these steps are performed "for a user who does **not** have a pre-existing master rental agreement with the rental car company". As such, there can be no doubt that the cited references, and HertzGold, in particular fail to disclose, teach, or suggest the method of claim 139. As explained above in connection with claim 62, the HertzGold reference requires that a user have a pre-existing MRA with the subject rental car company to expedite the rental process. Thus, the Examiner's statement to the contrary on page 12 of the Office Action constitutes reversible error (as is the Examiner's statement on page 2 of the Office Action indicating that no claims are limited to a method's operation relating to users without pre-existing MRAs). Proceeding fundamentally contrary to the teachings of HertzGold (and the other cited references),

claim 139 specifically states that certain method steps are performed "for a user who does **not** have a pre-existing master rental agreement with the rental car company".

Therefore, Applicant respectfully submits that the Examiner also erred by rejecting claim 139 for obviousness.

viii. Claims Appendix:

Claims 1-61. CANCELED

62. (previously presented) A method of creating and storing an electronic rental contract for a rental vehicle such that a user need not visit a rental counter to create a rental contract when arriving at a car rental facility to pick up the rental vehicle, the method comprising:

hosting a website on a server system, the website comprising a plurality of web pages for access over a network by any of a plurality of client systems;

creating a rental vehicle reservation in response to data received through the website from a client system;

storing a reservation transaction within the server system, wherein the reservation transaction is representative of the created rental vehicle reservation;

electronically accepting additional data from the user through the website for a potential rental of a rental vehicle based on the rental vehicle reservation;

communicating an electronic rental proposal for display to the user on a web page of the website, the electronic rental proposal being based on the rental vehicle reservation and the accepted additional data;

creating an electronic rental contract for a rental vehicle in response to an electronic acceptance by the user of the electronic rental proposal, the electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract; and

storing a rental transaction within the server system, wherein the rental transaction is representative of the created electronic rental contract; and

wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility.

63. (previously presented) The method of claim 62 further comprising:

allocating a rental vehicle to the user at the car rental facility in accordance with the electronic rental contract without requiring the user to visit the rental counter.

64. (previously presented) The method of claim 62 further comprising:

after the reservation creating step, electronically receiving input from the user indicative of a request to convert the created reservation into an electronic rental contract; and

responsive to the received input, providing a web page of the website to a client system for display thereon that is configured to solicit the additional data from the user.

65. (previously presented) The method of claim 64 further comprising:

after the reservation creating step, providing a web page of the website to the client system for display thereon that is configured to provide the user with a user-selectable option to only create the reservation and a user-selectable option to convert the created reservation into an electronic rental contract; and

wherein the input receiving step comprises receiving a user selection of the option to convert the created reservation into an electronic rental contract, thereby advancing the user to the web page that is configured to solicit the additional data from the user.

66. (previously presented) The method of claim 64 further comprising:

after the reservation creating step, sending an email to the user, wherein the email comprises (1) a confirmation of the created reservation, and (2) a user-selectable link that is effective upon user selection to link the user to the web page that is configured to solicit the additional data from the user; and

wherein the input receiving step comprises receiving a user selection of the link.

67. (previously presented) The method of claim 64 further comprising:

automatically pre-filling at least a portion of the additional data into a web page of the website from a rental history associated with the user.

68. (previously presented) The method of claim 64 further comprising:

receiving a selection by the user of a button on the web page that is configured to solicit the additional data from the user; and

responsive to the button selection, automatically pre-filling at least a portion of the additional data into that web page from a rental history associated with the user.

69. (previously presented) The method of claim 64 further comprising:

automatically performing a suggestive sell for the potential rental through a web page of the website based on a rental history associated with the user.

70. (previously presented) The method of claim 69 wherein the suggestive sell is for an optional coverage item for the potential rental.

71. (previously presented) The method of claim 62 further comprising:

for a user who has a pre-existing master rental agreement with the rental car company, (1) providing a web page of the website to a client system for display thereon that is configured to solicit the data for creating the reservation from the user, and (2) automatically pre-filling at least a portion of the data for creating the reservation into that web page from the master rental agreement.

72. (previously presented) The method of claim 71 further comprising:

permitting the user to electronically modify the pre-filled data without modifying the master rental agreement.

73. (previously presented) The method of claim 72 further comprising:

receiving a modification of the pre-filled data from the user through the website;

electronically notifying the user with a selectable option to keep the modification and a selectable option to revert to the pre-filled data;

receiving a selection of one of the two options from the user; and

using data for the reservation based on the received option selection.

74. (previously presented) The method of claim 62 wherein the additional data comprises driver's license information for the user, the method further comprising performing the following steps before the communicating step:

electronically performing a validation operation on the driver's license information such that the communicating step is not performed should the validation operation indicate the driver's license information is invalid; and

should the validation operation indicate the driver's license information is invalid, electronically requesting that the user re-submit new driver's license information.

75. (previously presented) The method of claim 62 wherein the additional data comprises credit card payment information for the user, the method further comprising performing the following steps before the communicating step:

electronically performing a validation operation on the credit card payment information such that the communicating step is not performed should the validation operation indicate the credit card payment information is invalid; and

should the validation operation indicate the credit card payment information is invalid, electronically requesting that the user re-submit new credit card payment information.

76. (previously presented) The method of claim 62 wherein the additional data comprises driver's license information for the user and credit card payment information for the user, the method further comprising performing the following steps before the communicating step:

electronically performing a first validation operation on the driver's license information such that the communicating step is not performed should the first validation operation indicate the driver's license information is invalid;

should the first validation operation indicate the driver's license information is invalid, electronically requesting that the user re-submit new driver's license information;

electronically performing a second validation operation on the credit card payment information such that the communicating step is not performed should the second validation operation indicate the credit card payment information is invalid; and

should the second validation operation indicate the credit card payment information is invalid, electronically requesting that the user re-submit new credit card payment information.

77. (previously presented) The method of claim 62 wherein the server system is operated by the rental car company.

78. (previously presented) The method of claim 62 wherein the additional data comprises a modification of the reservation data.

Claims 79-112: CANCELED

113. (previously presented) A system for creating and storing an electronic rental contract for a rental vehicle such that a user need not visit a rental counter to create a rental contract when arriving at a car rental facility to pick up the rental vehicle, the system comprising a server system configured to:

host a website, the website comprising a plurality of web pages for access over a network by any of a plurality of client systems;

create a rental vehicle reservation in response to data received through the website from a client system;

store a reservation transaction, wherein the reservation transaction is representative of the created rental vehicle reservation;

electronically accept additional data from the user through the website for a potential rental of a rental vehicle based on the rental vehicle reservation;

communicate an electronic rental proposal for display to the user on a web page of the website, the electronic rental proposal being based on the rental vehicle reservation and the accepted additional data;

create an electronic rental contract for a rental vehicle in response to an electronic acceptance by the user of the electronic rental proposal, the electronic rental contract permitting the user to avoid creating a rental contract at the rental counter when arriving at the car rental facility to pick up a rental vehicle in accordance with the electronic rental contract; and

store a rental transaction, wherein the rental transaction is representative of the created electronic rental contract; and

wherein the server system is further configured to perform the additional data acceptance, the electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage regardless of whether the user has a pre-existing master rental agreement with a rental car company that operates the car rental facility.

114. (previously presented) The system of claim 113 wherein the server system is further configured to:

after the reservation creation, receive input from the user indicative of a request to convert the created reservation into an electronic rental contract; and

responsive to the received input, provide a web page of the website to a client system for display thereon that is configured to solicit the additional data from the user.

115. (previously presented) The system of claim 114 wherein the server system is further configured to:

after the reservation creation, provide a web page of the website to the client system for display thereon that is configured to provide the user with a user-selectable option to only create the reservation and a user-selectable option to convert the created reservation into an electronic rental contract; and

receive a user selection of the option to convert the created reservation into an electronic rental contract for thereby advancing the user to the web page that is configured to solicit the additional data from the user.

116. (previously presented) The system of claim 114 wherein the server system is further configured to:

after the reservation creation, send an email to the user, wherein the email comprises (1) a confirmation of the created reservation, and (2) a user-selectable link that is effective upon user selection to link the user to the web page that is configured to solicit the additional data from the user; and

receive a user selection of the link.

117. (previously presented) The system of claim 114 wherein the server system is further configured to automatically pre-fill at least a portion of the additional data into a web page of the website from a rental history associated with the user.

118. (previously presented) The system of claim 114 wherein the server system is further configured to:

receive a selection by the user of a button on the web page that is configured to solicit the additional data from the user; and

responsive to the button selection, automatically pre-fill at least a portion of the additional data into that web page from a rental history associated with the user.

119. (previously presented) The system of claim 114 wherein the server system is further configured to:

automatically perform a suggestive sell for the potential rental through a web page of the website based on a rental history associated with the user.

120. (previously presented) The system of claim 119 wherein the suggestive sell is for an optional coverage item for the potential rental.

121. (previously presented) The system of claim 113 further comprising:

for a user who has a pre-existing master rental agreement with the rental car company, (1) provide a web page of the website to a client system for display thereon that is configured to solicit the data for creating the reservation from the user, and (2) automatically pre-fill at least a portion of the data for creating the reservation into that web page from the master rental agreement.

122. (previously presented) The system of claim 121 wherein the server system is further configured to permit the user to electronically modify the pre-filled data without modifying the master rental agreement.

123. (previously presented) The system of claim 122 wherein the server system is further configured to:

receive a modification of the pre-filled data from the user through the website;

notify the user with a selectable option to keep the modification and a selectable option to revert to the pre-filled data;

receive a selection of one of the two options from the user; and

use data for the reservation based on the received option selection.

124. (previously presented) The system of claim 113 wherein the additional data comprises driver's license information for the user, and wherein the server system is further configured to perform the following actions before the electronic rental proposal communication:

perform a validation operation on the driver's license information such that the electronic rental proposal communication is not performed should the validation operation indicate the driver's license information is invalid; and

should the validation operation indicate the driver's license information is invalid, electronically request that the user re-submit new driver's license information.

125. (previously presented) The system of claim 113 wherein the additional data comprises credit card payment information for the user, and wherein the server system is further configured to perform the following actions before the electronic rental proposal communication:

perform a validation operation on the credit card payment information such that the electronic rental proposal communication is not performed should the validation operation indicate the credit card payment information is invalid; and

should the validation operation indicate the credit card payment information is invalid, electronically request that the user re-submit new credit card payment information.

126. (previously presented) The system of claim 113 wherein the additional data comprises driver's license information for the user and credit card payment information for the user, and wherein the server system is further configured to perform the following actions before the electronic rental proposal communication:

perform a first validation operation on the driver's license information such that the electronic rental proposal communication is not performed should the first validation operation indicate the driver's license information is invalid;

should the first validation operation indicate the driver's license information is invalid, electronically request that the user re-submit new driver's license information;

perform a second validation operation on the credit card payment information such that the electronic rental proposal communication is not performed should the second validation operation indicate the credit card payment information is invalid; and

should the second validation operation indicate the credit card payment information is invalid, electronically request that the user re-submit new credit card payment information.

127. (previously presented) The system of claim 113 wherein the additional data comprises a modification of the reservation data.

Claims 128-136: CANCELED

137. (previously presented) The system of claim 113 wherein the server system is further configured to perform the additional data acceptance, the electronic rental proposal communication, the electronic rental contract creation and the rental transaction storage for a user who does not have a pre-existing master rental agreement with the rental car company.

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139. (previously presented) The method of claim 62 wherein the electronically accepting, communicating, electronic rental contract creating and rental transaction storing steps are performed for a user who does not have a pre-existing master rental agreement with the rental car company.

ix. Evidence Appendix:

Enclosed herewith as Exhibits 1-3, respectively, are copies of the "Hertz" reference, the "Avis" reference, and the "HertzGold" reference relied upon by the Examiner to support the subject obviousness rejections in the March 17, 2011 Office Action.

Exhibit 4 is a copy of the reference "Hertz Services: #1 Club Gold, "United States Programs" reference, from web.archive.org/web/19970403234524/ www.hertz.com/serv/us/program_gold.html, 1 page".

Exhibit 5 is a copy of the reference "Hertz #1 Club Gold, "The fast, easy way to rent a car around the world", from web.archive.org/web/1998070194845/ www.hertz.com/serv/us/gold/learnmore.html, 2 pages".

Exhibit 6 is a copy of the reference "Hertz #1 Club Gold Screenprints from web.archive.org for www.hertz.com from July 2, 1998, accessed from web.archive.org on September 29, 2010, 10 pages".

Exhibit 7 is a copy of the reference "Hertz Rate and General Information, "Rate and General Information Screen", from web.archive.org/web/199704032325…rtz.com/ InteractiveRes/htm..., 1 page".

Exhibits 4-7 were submitted by Applicant on October 1, 2010 with Applicant's "Amendment with Request for Continued Examination (RCE)" filed that same day, and subsequently entered and considered by the Examiner in the March 17, 2011 Office Action from which appeal is sought.

Exhibit 8 is a copy of the "Declaration of David G. Smith Pursuant to 37 CFR 1.132". This exhibit was submitted by Applicant on April 18, 2008 with Applicant's "Amendment" filed that same day, and subsequently entered and considered by the Examiner in the Office Action dated July 24, 2008.

x. Related Proceedings Appendix:

As indicated above, a Decision on Appeal was previously rendered for this patent application in connection with claims that are no longer pending in this patent application. A copy of this Decision on Appeal is enclosed as Exhibit 9.

For the foregoing reasons, Applicant respectfully submits that the Examiner's rejections as to all pending claims in this patent application are in error and must be reversed. Favorable action is respectfully requested.

Respectfully submitted,

Thompson Coburn LLP

By: /Benjamin L. Volk, Jr.
Benjamin L. Volk, Jr.
Reg. No. 48,017
One US Bank Plaza
St. Louis, MO 63101-1693
(314) 552-6000
(314) 552-7000 (fax)